

October 27, 2009

Joe Rebein

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, N.W.
Washington, D.C. 20423

2555 Grand Blvd.
Kansas City
Missouri 64108-2613
816.474.6550
816.559.2227 DD
816.421.5547 Fax
jrebein@shb.com

Re: STB Finance Docket No. 35305

Dear Ms. Quinlan:

Enclosed for filing on behalf of Union Pacific Railroad Company in the above-captioned matter is the Reply of Union Pacific Railroad Company to Western Coal Traffic League's Request for Leave to Intervene.

Sincerely,


Joe Rebein

JR:mkw
Enclosure

Geneva
Houston
Kansas City
London
Miami
Orange County
San Francisco
Tampa
Washington, D.C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35305

**REPLY OF UNION PACIFIC RAILROAD COMPANY TO WESTERN COAL
TRAFFIC LEAGUE'S REQUEST FOR LEAVE TO INTERVENE**

J. Michael Hemmer
Louise Anne Rinn
Union Pacific Railroad Company
1400 Douglas, STOP 1580
Omaha, Nebraska 68179
Telephone: 402.544.3309

Joe Rebein
Laurie A Novion
Corey Schaecher
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
Telephone: 816.474.6550

Dated: October 27, 2009

Attorneys for Union Pacific Railroad
Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35305

**REPLY OF UNION PACIFIC RAILROAD COMPANY TO WESTERN COAL
TRAFFIC LEAGUE'S REQUEST FOR LEAVE TO INTERVENE**

Union Pacific Railroad Company ("Union Pacific") requests leave to reply to address the gratuitous and misleading statement made by Western Coal Traffic League ("WCTL") in its request for leave to intervene.

WCTL asserts that Union Pacific has declined to start a dialogue with WCTL about coal dust issues. WCTL Request for Leave to Intervene at 3. In support of this contention, WCTL attached the letter it had sent to both Union Pacific and BNSF Railway Company ("BNSF") on August 17, 2009. But, WCTL did not include Union Pacific's response to that letter on September 8, 2009, a copy of which is attached as Exhibit A.

By failing to give the Board the rest of the story, WCTL failed to disclose that Union Pacific rejected an invitation to engage in collective discussions and that Union Pacific affirmed its commitment to communicate with customers in one-on-one discussions. Union Pacific's reply letter points out that WCTL invited Union Pacific to join a collective effort to "allocate costs and benefits" with Union Pacific's competitor and customers of both railroads and "urged BNSF and UP not to pursue unilateral actions." Such a proposal poses antitrust risk not only to Union Pacific but to WCTL.

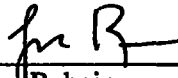
members. Union Pacific's letter then described our past and continuing efforts to communicate directly with our customers about coal dust mitigation and alternatives. Union Pacific remains committed to discussing these important issues with our customers, but in a manner that is consistent with antitrust laws.

WCTL's closing statement in its Request for Leave to Intervene that Union Pacific declined WCTL's invitation to start a dialogue concerning coal dust, without providing the context of Union Pacific's actual response, is improper, impertinent and attempts to prejudice the Board against Union Pacific before a proceeding has been instituted. Finally, the statement also bears no relationship to the Board's criteria for intervention. This reply, including our response to WCTL's letter, provides the rest of story to the Board.

Dated: October 27, 2009

Respectfully submitted,

By:



Joe Rebein
Laurie A Novion
Corey Schaecher

J. Michael Hemmer
Louise Anne Rinn
Union Pacific Railroad Company
1400 Douglas, STOP 1580
Omaha, Nebraska 68179
Telephone: 402.544.3309

SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
Telephone: 816.474.6550

Attorneys for Union Pacific Railroad
Company

CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of October, 2009, I caused a copy of the foregoing document to be served by first class mail, postage prepaid, on the following:

Counsel of Record for Arkansas Electric Cooperative Corporation:

Alex Menendez
MCLEOD WATKINSON & MILLER
One Massachusetts Avenue NW, Suite 800
Washington, DC 20001

Counsel of Record for BNSF Railway Company:

Samuel M. Sipe, Jr.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue NW
Washington, DC 20036-1795

Counsel for Western Coal Traffic League:

John H. LeSeur
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, DC 20036-3003



Attorney for Union Pacific Railroad
Company

EXHIBIT A

September 8, 2009



Barry Williams
President, Western Coal Traffic League
1224 Seventeenth Street, N.W.
Washington, D.C. 20036-3003

Coal Dust

Dear Mr. Williams:

This letter responds to the Western Coal Traffic League ("WCTL") dated August 17, 2009. Because WCTL's August 17 letter raises serious antitrust concerns and because the WCTL letterhead confirmed that the law firm of Slover & Loftus is the headquarters of your association, I am replying on UP's behalf. I will point out a potential antitrust violation proposed by WCTL, reply to WCTL's suggestion on how UP should respond to data requests from its members, and respond to the opinions expressed in WCTL's letter.

First and most important, WCTL's August 17 letter suggests a course of conduct that many would characterize as a violation of the antitrust laws. When "WCTL urges BNSF and UP not to pursue unilateral actions ...in the absence of a clear consensus between BNSF, UP, and the coal shipping community" on "how to fairly allocate the associated costs and benefits" relating to coal dust mitigation and track maintenance on page 3, WCTL appears to solicit collective action to set prices and terms of coal transportation contracts or tariffs. UP rejects this invitation and we are surprised that WCTL would make such a suggestion. Not only do UP and BNSF compete for WCTL members' business, but your members compete with one another when buying and selling electricity on the grid and when acquiring coal supplies from the SPRB producers. Consequently, participating in the suggested consensus would expose WCTL members to potential antitrust enforcement action.

UP policy is to comply with the antitrust laws. Therefore, while we do and will negotiate individually with customers or potential customers, UP will continue to determine the rates and terms that it offers to, or accepts from, those customers unilaterally.

Louise Anne Rinn
Associate General Counsel

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3309 fx. (402) 501-0129
larinn@up.com

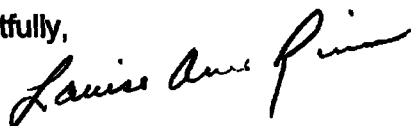
Second, WCTL also urges UP to provide all coal dust study data, procedures, results including results of on-going activities to measure coal dust emissions. UP has already informed its customers and the SPRB mines of its efforts to provide information on how cars are loaded and emissions through its customer website. We will update them on our progress on a regular basis.

Third, WCTL's August 17 letter is full of opinions and assertions, but provides no facts in support of the positions that WCTL espouses. UP will not reply to those claims, but our silence should not be construed as agreement. Instead, I will note that since 2005 UP has participated in numerous efforts to develop and share data about coal dust with the stakeholders in the SPRB. BNSF and UP, as co-owners of the Joint Line, shared the results and the methodology of their consultant, Simpson Weather Associates at National Coal Transportation Association ("NCTA") meetings. UP also participated with NCTA teams that developed information about the sources of coal emissions and the relative effectiveness of different methods to reduce emissions. We also cooperated in a NCTA-commissioned study by Exponent, an engineering firm, to explore the feasibility and the relative performance of applying surfactants. So while UP has actively supported the collection and dissemination of data regarding coal dust and that data demonstrates that coal dust presents a serious problem and that practicable means to reduce coal dust are available, WCTL has contributed no data to the best of my knowledge.

Please note that UP's cooperation in various efforts to develop and disseminate information about coal dust emissions and alternative mitigation techniques materially differs from WCTL's proposal. Unlike WCTL's suggestion to develop a consensus on allocation of costs and benefits, UP's participation in those other efforts has increased the information available to stakeholders when making their individual decisions, but we have not joined in or ever advocated a collective decision on how to proceed.

In summary, UP is committed to communicating about coal dust and discussing mitigation with its customers whether they belong to WCTL or not. We intend to remain focused on direct dialogue with our customers to inform UP's business decisions. We decline to participate in a WCTL-sponsored effort to develop a consensus among competitors instead of exercising our independent business judgment consistent with the antitrust laws.

Respectfully,

A handwritten signature in cursive script, appearing to read "Laurie Ann Finner".

Cc: Doug Glass